

Practice Notes

Failure to File a Notice of Appeal. Only a party that has filed a notice of appeal may attack all or any part of the trial court judgment. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

Fees. The fee schedule is set forth in Federal Circuit Rule 52. See also 28 U.S.C. sec. 1913, note 1 [Judicial Conference Schedule of Fees].

Filing and Docketing an Appeal. An appeal is docketed when the notice of appeal is received in, or, when permitted, mailed to the trial court. An appeal sent to this court by the trial court clerk is docketed when it is assigned a docket number, a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.

Filing and Docketing Appeals Under 15 U.S.C. sec. 3416(c) and Petitions Under 42 U.S.C. sec. 300aa-12(f). Appeals under 15 U.S.C. sec. 3416(c) from the district courts and petitions under 42 U.S.C. sec. 300aa-12(f) from the Court of Federal Claims are filed in this court, unlike other appeals from those courts in which the notice of appeal is filed with the clerks of those courts. However, once these appeals or petitions are filed in this court, they are forwarded to the clerks of those courts with instructions to comply with Federal Rule of Appellate Procedure 3(d).

Appeal Information Sheet. The form for the appeal information sheet is at Appendix of Federal Circuit Forms, Form 4.

Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case

[Abrogated]

Rule 4. Appeal as of Right — When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

Rule 4. Appeal as of Right - When Taken

Untimely Notice of Appeal. The clerk may return a notice of appeal that is untimely on its face.

- (3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.
- (4) **Effect of a Motion on a Notice of Appeal.**
- (A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
- (i) for judgment under Rule 50(b);
 - (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
 - (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
 - (iv) to alter or amend the judgment under Rule 59;
 - (v) for a new trial under Rule 59; or
 - (vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.
- (B) (i) If a party files a notice of appeal after the court announces or enters a judgment — but before it disposes of any motion listed in Rule 4(a)(4)(A) — the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.
- (ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
- (iii) No additional fee is required to file an amended notice.
- (5) **Motion for Extension of Time.**
- (A) The district court may extend the time to file a notice of appeal if:

FEDERAL RULES OF APPELLATE PROCEDURE

FEDERAL CIRCUIT RULE

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
 - (ii) that party shows excusable neglect or good cause.
 - (B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.
 - (C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.
- (6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
- (A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;
 - (B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and
 - (C) the court finds that no party would be prejudiced.
- (7) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.
- (b) Appeal in a Criminal Case.**
- (1) Time for Filing a Notice of Appeal.**
- (A) ~~In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:~~
 - (i) ~~the entry of either the judgment or the order being appealed; or~~
 - (ii) ~~the filing of the government's notice of appeal.~~
 - (B) ~~When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:~~

- (i) the entry of the judgment or order being appealed; or
 - (ii) the filing of a notice of appeal by any defendant.
- (2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision, sentence, or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.
- (3) **Effect of a Motion on a Notice of Appeal.**
 - (A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:
 - (i) for judgment of acquittal under Rule 29;
 - (ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or
 - (iii) for arrest of judgment under Rule 34.
 - (B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:
 - (i) the entry of the order disposing of the last such remaining motion; or
 - (ii) the entry of the judgment of conviction.
 - (C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).
- (4) **Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may — before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).
- (5) **Jurisdiction.** The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal

FEDERAL RULES OF APPELLATE PROCEDURE

FEDERAL CIRCUIT RULE

~~filed before entry of the order disposing of the motion.~~

- (6) **Entry Defined.** ~~A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.~~

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in ~~either a civil or a criminal~~ case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketed the first notice.

~~(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.~~

- (d) Mistaken Filing in the Court of Appeals.** If a notice of appeal in ~~either a civil or a criminal~~ case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

Practice Notes

Time to Appeal. The table below is provided only as a convenience for counsel, who should refer to the statutes and caselaw before determining the period available for taking an appeal. Counsel should also be aware of the district court's authority under Federal Rule of Appellate Procedure 4 to extend or reopen the time for appeal.

Court	Statute	Time
District Courts	28 U.S.C. § 2107	30 days (60 days If U.S. is a party)
	15 U.S.C. § 3416(c)	30 days
Court of International Trade	28 U.S.C. § 2645(c)	60 days
Court of Federal Claims		
Appeals	28 U.S.C. § 2522	60 days
Petitions	42 U.S.C. § 300aa-12(f)	60 days
Court of Appeals for Veterans Claims	38 U.S.C. § 7292	60 days
High Court of the Trust Territory of the Pacific Islands	48 U.S.C. § 1901 note (1994)(Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title One, Article VII, § 174(c)); 48 U.S.C. 1931 note (1994)(Compact of Free Association: Palau, Title II, Title One, Article VII § 174(c))	60 days

Untimely Notice of Appeal. The court of appeals cannot waive the untimely filing of a notice of appeal.

Duty to Notify the Clerk of Post-Judgment Motions in the Trial Court. Even though the district court clerk must forward copies of later docket entries under Federal Rule of Appellate Procedure 3(d), the appellant should promptly notify this court's clerk if any party in the case files a motion listed in Federal Rule of Appellate Procedure 4(a)(4). Any other party may also notify the clerk in such case. On receiving the appropriate docket entries from the district court, the clerk will deactivate, and then reactivate, the appeal. Deactivation of the appeal suspends all further action in the court of appeals. Upon reactivation, the clerk will reschedule the next required filing and notify counsel.